

TO: <p style="text-align: center;">Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451</p>	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Colorado on the following Trademarks

DOCKET NO. 11-cv-1306 PAB-KLM	DATE FILED 5/18/2011	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF Spyderco, Inc		DEFENDANT Global Wholesale & Auction

PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 1,965,458		Please see copy of Complaint attached hereto
2 1,957,810		
3 3,169,987		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
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PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SPYDERCO, INC., a Colorado corporation,

Plaintiff,

v.

GLOBAL WHOLESALE & AUCTION, a Tennessee company;
BONNIE ASMAR, an Individual; and
DARRYL ASMAR, an Individual,

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiff Spyderco, Inc. ("Spyderco"), for its Complaint against Defendants Global Wholesale & Auction ("Global"), Ms. Bonnie Asmar, and Mr. Darryl Asmar, collectively ("Defendants"), alleges as follows:

I. THE PARTIES

1. Spyderco is a corporation in good standing organized and existing under the laws of the State of Colorado, having its principal place of business at 820 Spyderco Way, Golden, Colorado 80403 ("Spyderco").

2. Upon information and belief, Global is a Tennessee company of unknown type having a principal place of business at 1270 Phillips Road, White Pine, Tennessee 37890.

3. Upon information and belief, Bonnie Asmar is an individual having an address of 1423 Cain Mill Road, Russellville, Tennessee 37860-9325.

4. Upon information and belief, Darryl Asmar is an individual having an address of 1423 Cain Mill Road, Russellville, Tennessee 37860-9325.

II. JURISDICTION AND VENUE

5. This action arises under §§ 1114(1) and 1125(a) of the Trademark Act of July 5, 1946, as amended, commonly known as the Lanham Act, 15 U.S.C. § 1051, et seq., and the common law of the State of Colorado.

6. The Court has subject matter jurisdiction over all asserted claims under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1332 (as the amount in controversy exceeds \$75,000) and 1338, and 28 U.S.C. § 1367, the supplemental jurisdiction statute codifying the pendent and ancillary jurisdiction doctrines.

7. The Court has personal jurisdiction over the Defendants, as Spyderco's claims arise from Defendants' transactions of business in this judicial district, as Spyderco's claims arise from Defendants' commission of tortious acts in this judicial district, and as Spyderco is being damaged in this judicial district by Defendants' tortious conduct.

8. The Court has personal jurisdiction over Defendants because they transact business in this judicial district (directly or through intermediaries), as Spyderco's claims arise from Defendants' commission of tortious acts which reach this judicial district, and as Spyderco is being damaged in this judicial district by Defendants' tortious conduct.

9. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391.

III. GENERAL ALLEGATIONS

10. Spyderco is engaged in the business of, among other things, designing, developing, manufacturing and distributing knives and knife accessories throughout the United States, including Colorado, and the world.

A. Spyderco's Federally Registered Trademark

11. Spyderco is the owner of U.S. Trademark Registration Number 1,965,458 in International Class 8 (U.S. Classes 23, 28 and 44) for folding knives (the "Spyderco Mark"). A true and accurate copy of the Spyderco Mark registration is attached hereto as Exhibit 1, which is incorporated herein by this reference.

12. Spyderco is the owner of U.S. Trademark Registration Number 1,957,810 in International Class 8 (U.S. Classes 23, 28 and 44) for knives (the "Bug Mark"). A true and accurate copy of the Bug Mark registration is attached hereto as Exhibit 2, which is incorporated herein by this reference.

13. Spyderco is the owner of U.S. Trademark Registration Number 3,169,987 in International Class 8 (U.S. Classes 23, 28 and 44) for folding knives (the "Byrd Mark"). A true and accurate copy of the Byrd Mark registration is attached hereto as Exhibit 3, which is incorporated herein by this reference.

B. Spyderco's Byrd Trade Dress

14. Spyderco has marketed and sold unique folding knife products under the name "Byrd."

15. Byrd knives utilize an overall distinctive product look and theme, which has been developed exclusively by Spyderco ("Byrd Trade Dress").

16. Knives utilizing the Byrd Trade Dress were first commercially introduced by Spyderco several years ago. Since that time, these knives have met with commercial success and consumer recognition, and thus the Byrd Trade Dress has developed significant meaning in the mind of relevant consumers.

17. Spyderco has invested substantial time, creative effort and money in developing its highly distinctive, original and successful Byrd Trade Dress. As a result of this and years of superior product development and consumer service, Spyderco has developed substantial consumer recognition, trust, loyalty and goodwill in and to its Byrd Trade Dress.

18. Based upon Spyderco's continuous and uninterrupted use of the Byrd Trade Dress for more than several years in interstate commerce, relevant consumers have come to associate the Byrd Trade Dress exclusively with Spyderco.

19. Spyderco has acquired strong common law trade dress rights in and to the Byrd Trade Dress.

C. Defendants' Infringing Conduct

20. On May 16, 2011, Spyderco contacted the eBay user "a-to-z-factoryseller" (the "Seller") through counsel regarding a specific product ("Infringing Product") the Seller was offering for sale through eBay.com. A representative listing of the Infringing Product and related eBay page is attached hereto as Exhibit 4.

21. The Seller is a large-scale provider of various goods in Colorado and throughout the United States, at least through eBay.com.

22. The Infringing Product offered by the Seller unlawfully incorporates Spyderco's federally registered rights under the Spyderco Mark, Bug Mark, and Byrd Mark.

23. On May 17, 2011, Seller's representative contacted counsel for Spyderco and indicated that Seller would be willing to provide identifying information to Spyderco regarding the source of the Infringing Product.

24. Later that day, Seller contacted counsel for Spyderco via telephone and indicated that one "Mr. Darrell Ahmar," later discovered to be "Mr. Darryl Asmar," residing in Tennessee and having a phone number of 586-634-1645, originally provided the Infringing Product to Seller.

25. The Seller indicated that Mr. Darryl Asmar possessed or otherwise had access to a substantial quantity of goods similar to the Infringing Product.

26. Counsel for Spyderco immediately undertook an investigation of Mr. Asmar.

27. A public records search indicated that the phone number 586-634-1645 was associated with a Bonnie Asmar of Hamblen County, Tennessee. The search indicated that Ms. Asmar may also be known as Bonnie Brown or Bonnie Thomas.

28. The public records search listed Ms. Bonnie Asmar as having addresses of 1270 Phillips Road, White Pine, Tennessee 37890-4001, and 1423 Cain Mill Road, Russellville, Tennessee 37860.

29. An additional public records search of Darryl Asmar indicated that Mr. Asmar also has an address of 1423 Cain Mill Road, Russellville, Tennessee 37860.

30. A search of Global indicated that the company also has an address of 1270 Phillips Road, White Pine, Tennessee 37890.

31. Global is listed as a wholesaler of "Toy & Hobby Goods" on www.manta.com.

32. Upon information and belief, the three Defendants are related and engaged in the business of selling and/or offering goods for sale that infringe Spyderco's federally registered rights under the Spyderco Mark, Bug Mark, and Byrd Mark.

33. Upon information and belief, Defendants sold the Infringing Product to the Seller.

34. Upon information and belief, Defendants are continuing to sell and/or offer for sale goods that infringe Spyderco's federally registered rights under the Spyderco Mark, Bug Mark, and Byrd Mark.

IV. FIRST CLAIM FOR RELIEF
(Trademark Infringement Under Federal Law)

35. Spyderco incorporates paragraphs 1 through 34 as though fully set forth herein.

36. This is a claim for infringement of the federally registered Spyderco Mark, Bug Mark and Byrd Mark, as depicted in the attached Exhibits 1-3. Defendants' conduct also constitutes an attempt to trade on the goodwill which Spyderco has developed in the Spyderco Mark, Bug Mark and Byrd Mark, all to the damage of Spyderco.

37. Defendants' conduct is likely to cause confusion, or to cause mistake, or to deceive potential purchasers and others, whereby they would be led to mistakenly believe that Defendants are affiliated with, related to, sponsored by, or connected to Spyderco, in violation of 15 U.S.C. § 1114(1).

38. Defendants' conduct has caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage and injury to Spyderco.

39. Spyderco has no adequate remedy at law.

V. SECOND CLAIM FOR RELIEF
(§ 43(a) of the Lanham Act)

40. Spyderco incorporates paragraphs 1 through 39 as though fully set forth herein.

41. Defendants have promoted and sold, and continue to promote and sell in interstate commerce, folding knife products under Spyderco's Spyderco Mark, Bug Mark, Byrd Mark and Byrd Trade Dress. In so doing, Defendants have described falsely and misrepresented their goods and those goods' characteristics.

42. Defendants' actions have created a likelihood of consumer confusion as to the affiliation, connection or association with Spyderco and/or as to the origin, sponsorship or approval of goods by Spyderco.

43. Defendants' unauthorized use of the Spyderco Mark, Bug Mark, Byrd Mark and Byrd Trade Dress, in connection with the marketing and sale of folding knife products, is a willful violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. As a result of Defendants' unlawful actions, Spyderco has suffered commercial harm.

45. Spyderco has been and continues to be harmed irreparably by Defendants' actions and has no adequate remedy at law.

VI. THIRD CLAIM FOR RELIEF
(Deceptive Trade Practices)

46. Spyderco incorporates paragraphs 1 through 45 as though fully set forth herein.

47. Defendants' actions as described above have caused and are likely to cause confusion with the established and superior rights of Spyderco and otherwise unfairly compete with Spyderco. As such, Defendants' actions constitute unfair competition and/or misappropriation under Colorado common law.

48. As a result of Defendants' wrongful actions, Spyderco has suffered commercial harm.

49. Defendants' wrongful actions were committed with willful and wanton disregard for Spyderco's rights.

50. Spyderco has been and continues to be harmed irreparably by Defendants' actions and Spyderco has no adequate remedy at law.

VII. PRAYER FOR RELIEF

WHEREFORE, Spyderco prays for judgment in its favor and against Defendants as follows:

A. That Defendants, their agents, servants, officers, directors, employees, attorneys, privies, representatives, successors, assigns and parent and subsidiary corporations or other related entities, and any and all persons in act of concert or participation with any of them, be preliminarily and permanently enjoined from:

(1) any further infringement of the Spyderco Mark, Bug Mark and Byrd Mark;

(2) any further direct or indirect use of Spyderco's Byrd Trade Dress or any mark or trade dress which is confusingly similar thereto;

(3) performing any action or using any trade dress, or other name, mark, symbol or slogan which is likely to cause confusion or mistake, or to deceive or otherwise mislead the trade and/or the public into believing that Spyderco and Defendants are one and the same or in some way connected, or that Spyderco is the sponsor of Defendants, or that Defendants are in some manner affiliated or associated with, or under the supervision or control of Spyderco, or that Defendants' products originate with Spyderco, or are connected or offered with the approval, consent, authorization, or under the supervision of Spyderco;

(4) manufacturing, marketing or selling any product or material containing or utilizing Spyderco's intellectual property; or

(5) any other conduct constituting unfair competition with Spyderco.

B. That Defendants be ordered to deliver up to Spyderco for destruction, or certify destruction of, all products that infringe Spyderco's patents or contain Spyderco's Trade Dress or any confusingly similar trade dress, used in connection with the manufacture, marketing or sale of folding knife products;

C. That Defendants be ordered to file with the Court and serve on Spyderco, within thirty (30) days after the entry of an injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with any ordered injunction;

D. That Spyderco be awarded damages in an amount to be determined at trial for all infringing activities, including Spyderco's damages and lost profits, Defendants' profits, plus any costs incurred in preventing future confusion, mistake or deception, all from the date of first infringement;

E. That Defendants pay Spyderco a sum sufficient to cover the cost of corrective advertising necessary to alleviate any existing confusion resulting from Defendants' unauthorized use of Spyderco's proprietary rights;

F. That Spyderco be awarded treble actual damages and attorney's fees;

G. That Spyderco be awarded punitive damages;

H. That Spyderco be awarded pre-judgment and post-judgment interest;

I. That Spyderco be awarded costs and expenses, including expert witness fees; and

J. That such other and further preliminary and permanent relief be awarded as the Court deems appropriate.

VIII. JURY DEMAND

Spyderco demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: May 18, 2011

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ATTORNEYS FOR PLAINTIFF

Other Events

1:11-cv-01306-PAB Spyderco, Inc. v. Global Wholesale & Auction et al

U.S. District Court

District of Colorado

Notice of Electronic Filing

The following transaction was entered on 5/19/2011 at 8:43 AM MDT and filed on 5/18/2011

Case Name: Spyderco, Inc. v. Global Wholesale & Auction et al

Case Number: 1:11-cv-01306-PAB

Filer:

Document Number: 2

Docket Text:

REPORT on the filing or determination of an action mailed to Commissioner of Trademarks (erv,)

1:11-cv-01306-PAB Notice has been electronically mailed to:

Robert R. Brunelli rbrunelli@sheridanross.com, litigation@sheridanross.com

1:11-cv-01306-PAB Notice has been mailed by the filer to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1071006659 [Date=5/19/2011] [FileNumber=2990479-0]
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